



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2016-0864]

RIN 1625-AA08

Special Local Regulation; Ohio River, Owensboro, KY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation on the Ohio River from mile 755.0 to mile 759.0 in Owensboro, KY on September 30, 2016 through October 2, 2016.

This special regulation is necessary to provide for the safety of life on these navigable waters near Owensboro, KY, during the Owensboro Air Show. This rulemaking prohibits transit into, through, and within the regulated area unless authorized by the Captain of the Port Ohio Valley or a designated representative.

DATES: This rule is effective from 12 p.m. on September 30, 2016 through 4:30 p.m. on October 2, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0864 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer James Robinson, Sector Ohio Valley, U.S. Coast Guard; telephone 502-779-5347, email James.C.Robinson@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event is being held outside of the date and location currently contemplated in the publication. It is impracticable to publish an NPRM because we must establish this special local regulation by September 30, 2016.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be unnecessary as this event is a recurring event and mariners familiar with this location on the Ohio River are aware that in mid to late September, a weekend event air

show takes place. This year, the event will occur 01 weekend later than is currently published in the Federal Register. Furthermore, delaying this rule would be contrary to public interest of ensuring the safety of spectators and vessels during the event and immediate action is necessary to prevent possible loss of life and property. Broadcast Notices to Mariners (BNM) and information sharing with the waterway users will update mariners of the restrictions, requirements and enforcement times during this temporary situation.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port Ohio Valley (COTP) has determined that potential hazards associated with the air show starting September 30, 2016 will be a safety concern for anyone within the regulated area. The purpose of this rule is to ensure safety of life on the navigable waters in the temporary regulated area before, during, and after the Owensboro Air Show.

IV. Discussion of the Rule

The Coast Guard will establish a special local regulation from September 30, 2016 through October 2, 2016. The special local regulation will cover all navigable waters from mile 755.0 to 759.0 on the Ohio River in the vicinity of Owensboro, KY. Transit into and through this area is prohibited from 12 p.m. to 3:30 p.m. on September 30, 2016, 12 p.m. to 4:30 p.m. on October 01, 2016, and 12 p.m. to 4:30 p.m. on October 2, 2016. The duration of the regulation is intended to protect participants, spectators, and other persons and vessels before, during, and after the scheduled air show. No vessel or person will be permitted to enter the special local regulation without obtaining permission from the COTP or a designated representative. Deviation requests will be considered and reviewed on a case-by-case basis. The COTP Ohio Valley may be contacted by telephone at 1-800-253-7475 or can be reached by VHF-FM channel 16. Public

notifications will be made to the local maritime community prior to the event through the Local Notice to Mariners, and Broadcast Notice to Mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the special local regulation. The temporary special local regulation will only be in effect for less than five hours each day. The Coast Guard expects minimum adverse impact to mariners from the special local regulation’s activation as the event has been advertised to the public. Also, mariners may request authorization from the COTP Ohio Valley or the designated representatives to transit the regulated area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are

independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for Federalism under Executive Order 13132, Federalism, if it has

a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, KY the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have

determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting less than five hours a day that will prohibit entry on all waters of the Ohio River, surface to bottom, extending from mile 755.0 to 759.0. It is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233

2. Add § 100.35T08-0864 to read as follows:

§ 100.35T08-0864 Special Local Regulation; Ohio River, Owensboro, KY.

- (a) Regulated area. All waters of the Ohio River beginning at mile marker 755.0 and

ending at mile marker 759.0 in Owensboro, KY.

(b) Period of enforcement. This rule will be enforceable from 12 p.m. to 3:30 p.m. on September 30, 2016, 12 p.m. to 4:30 p.m. on October 1, 2016, and 12 p.m. to 4:30 p.m. on October 2, 2016.

(c) Special local regulations. (1) Persons or vessels desiring to enter into or passage through the zone must request permission from the COTP Ohio Valley or a designated representative. They may be contacted on VHF-FM radio channel 16 or phone at 1-800-253-7465.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted via VHF-FM radio channel 16 or by phone at 502-587-8633.

(3) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(d) Informational broadcasts. The COTP Ohio Valley or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the regulated area as well as any changes in the planned schedule.

Dated: September 12, 2016.

M. B. Zamperini,
Captain, U.S. Coast Guard,
Captain of the Port Ohio Valley.

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